

ORDER NO. 2687

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Nanci E. Langley

Complaint of Frederick Foster

Docket No. C2015-3

ORDER DISMISSING COMPLAINT

(Issued August 26, 2015)

I. INTRODUCTION

On June 24, 2015, Frederick Foster (Foster) filed a complaint pursuant to 39 U.S.C. § 3662 alleging violations of sections 401, 403(c), and [404a] of title 39, criminal violations, including racketeering, under title 18, antitrust violations under title 15, and various tort claims by the Postal Service, Postal Service Office of Inspector General (OIG), Pitney Bowes, Inc. (Pitney Bowes), and persons to be discovered.¹ For the reasons discussed below, the Commission dismisses the Complaint with prejudice.

¹ Complaint of Frederick Foster, June 24, 2015 (Complaint). The Complaint appears to be filed against the Postal Service and Pitney Bowes; however, allegations against the OIG are also described in the Complaint. Foster initially alleges a violation of section 403(c); however, in the remainder of the Complaint, he provides no specific facts detailing a violation of that section. *Id.* at ¶ 2. In addition, all alleged violations concerning section 404 are construed as violations of section 404a. *Id.*

II. BACKGROUND

In 2007, Foster submitted an idea for a secure digital delivery service called Virtual P.O. Box/Internet Passport (Virtual P.O. Box) to the Postal Service's Innovations database. Complaint at ¶ 12. That database provides the mailing community with a mechanism to submit ideas to the Postal Service on ways to improve postal products and services.² Each submitter must agree to the terms and conditions of use. *Id.* The Postal Service considered the concept of Virtual P.O. Box, but eventually decided to not pursue the idea.³

In early 2011, Pitney Bowes, an organization that Foster alleges has a longstanding business relationship with the Postal Service, launched a secure digital mail delivery service called Volly.com. Complaint at ¶ 33; *see also id.* at ¶¶ 50-59. Foster argues that many of the features of Volly.com duplicated the features of his Virtual P.O. Box concept. *Id.* at ¶ 33; *see also id.* at Exhibit J. In addition, Foster states that some features of a Postal Service program called Business Customer Gateway were duplicates of the Virtual P.O. Box concept. Complaint at ¶ 47.

On November 23, 2011, Foster filed a complaint against Pitney Bowes and the Postal Service in the Eastern District Court of Pennsylvania alleging multiple causes of action.⁴ In his District Court complaint, Foster claimed Pitney Bowes and the Postal

² See Innovations database at <http://about.usps.com/transforming-business/innovations.htm>.

³ Postal Service Motion at 4, Attachment C, D, and F; *see also* Complaint at ¶¶ 11-22, Exhibit D, E, and G. Foster indicates that, after the Postal Service rejected the Virtual P.O. Box concept, he was directed to the Postal Service's Unsolicited Proposal Program (UPP) to resubmit his idea; however Foster explains that he never submitted his idea to UPP because it did not fit the program's criteria. Complaint at ¶¶ 21-22.

⁴ *Foster v. Pitney Bowes Corporation, et al.*, 2011 WL 6076119 (E.D. Pa. 2011).

Service violated the Postal Accountability and Enhancement Act,⁵ misappropriated trade secrets by knowingly using them, intentionally misrepresented to Foster that the ideas he generated would be kept confidential, and committed conversion by wrongfully appropriating his idea. Foster claims that as a result, Pitney Bowes and the Postal Service were unjustly enriched.⁶

On March 9, 2012, the Postal Service filed a motion to dismiss the District Court Complaint.⁷ On July 23, 2012, the District Court granted the Postal Service's motion stating that the misrepresentation, fraud, and conversion allegations were barred by the Federal Torts Claims Act (FTCA) and that the plaintiff failed to exhaust his administrative remedies as to the unjust enrichment and misappropriation of trade secrets allegations as required by the FTCA.⁸ In addition, the District Court stated that it lacked subject matter jurisdiction over Foster's allegations of a 404a violation indicating that 404a claims should be filed with the Commission. *Id.*

On August 3, 2012, Pitney Bowes submitted a motion for judgment on the pleadings.⁹ On February 8, 2013, the District Court granted the motion stating that Foster failed to allege facts that showed he was entitled to relief.¹⁰ The District Court's decisions were later affirmed by the U.S. Court of Appeals and the U.S. Supreme Court denied Foster's petition for writ of certiorari.¹¹

⁵ Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3198 (2006).

⁶ *Foster v. Pitney Bowes Corporation, et al.*, 2013 WL 487196 (E.D. Pa. 2013).

⁷ *Foster v. Pitney Bowes Corporation, et al.*, 2012 WL 1599550 (E.D. Pa. 2012).

⁸ *Foster v. Pitney Bowes Inc., et al.*, 2012 WL 2997812 (E.D. Pa. 2012).

⁹ *Foster v. Pitney Bowes Corporation, et al.*, 2012 WL 5382384 (E.D. Pa. 2012).

¹⁰ *Foster v. Pitney Bowes Corporation, et al.*, 2013 WL 487196 (E.D. Pa. 2013).

¹¹ See *Foster v. Pitney Bowes Corporation, et al.*, 549 Fed. Appx. 982 (Fed. Cir., Dec. 11, 2013), rehearing denied on February 27, 2014; and *cert. denied, Foster v. Pitney Bowes Corporation, et al.*, 135 S.Ct. 182 (Oct. 6, 2014).

On June 24, 2015, Foster filed his Complaint with the Commission in the instant docket. On July 8, 2015, Pitney Bowes filed a motion to dismiss the Complaint.¹² Shortly thereafter, on July 14, 2015, the Postal Service filed its own motion to dismiss the Complaint. Postal Service Motion at 2. On August 13, 2015, Foster filed a response to the Postal Service and Pitney Bowes motions to dismiss.¹³

III. COMPLAINT

In the Complaint, Foster sets forth multiple claims against the Postal Service and its employees, Pitney Bowes and its employees, the OIG and its employees, as well as persons to be discovered.

Causes of action. Count I alleges violations of 39 U.S.C. §§ [404a(a)(2)] and [(a)(3)].¹⁴ Foster states that he created, designed, and developed the Virtual P.O. Box concept, and that it was therefore his intellectual property and he intended for it to be operated in partnership with the Postal Service. *Id.* at ¶ 359-360. Foster argues that the evidence set forth in his Complaint shows that the Postal Service disclosed his intellectual property to Pitney Bowes in violation of section 404a(a)(2). *Id.* Foster also states that the Postal Service used his intellectual property by partnering with Pitney Bowes in order to create Volly.com and argues those actions violated section 404a(a)(3). *Id.* at ¶ 360. Foster seeks damages in excess of \$150 million and for Pitney Bowes to cease operations of Volly.com, among other things. *Id.* Count I Prayer for Relief.

Count II alleges that the Postal Service and Pitney Bowes “in furtherance of their scheme to privatize [p]ostal operations, perpetuated the sabotage and the dismantling of...[Postal Service] assets including and relating to the assets of the Postal Service

¹² Pitney Bowes, Inc.’s Motion to Dismiss the Complaint of Frederick Foster, July 8, 2015 (Pitney Bowes Motion).

¹³ Plaintiff’s Response to Defendants’ Motions to Dismiss, August 13, 2015 (Foster’s Response).

¹⁴ Complaint at ¶¶ 358-361. Based on the allegations in Count I, the Commission construes Foster’s arguments as allegations of violations of 39 U.S.C. § 404a(a)(2) and (a)(3) and not 39 U.S.C. § 404(a)(2) and (a)(3). Sections 404(a)(2) and (a)(3) are not implicated.

Competitive Products Fund” in violation of 39 U.S.C. § 401(2).¹⁵ Foster contends that the Postal Service awarded a contract to real estate group CB Richard Ellis, Inc. and that it refused to terminate the contract after the OIG found issues with postal properties that CB Richard Ellis, Inc. leased or sold. *Id.* at ¶¶ 363-366. Foster seeks damages in excess of \$150 million and for the Postal Service to cease its contract with CB Richard Ellis, Inc., among other things. *Id.* Count II Prayer for Relief.

Count III alleges that the Postal Service knowingly violated section [404a(a)(2)] by disclosing his Virtual P.O. Box concept to Pitney Bowes or third parties.¹⁶ In addition, Foster argues the OIG “intentionally plagiarized” and “unlawfully” disclosed his Virtual P.O. Box concept in reports it issued.¹⁷ Foster maintains that the Postal Service and OIG, by “unlawfully” disclosing confidential information and acting in concert, engaged in unfair methods of competition.¹⁸ Foster contends that both parties are subject to a Federal suit pursuant to 39 U.S.C. § [409(d)] (Postal Service) and 39 U.S.C. § [409(e)] (OIG).¹⁹ Foster seeks damages in excess of \$1 billion, among other things. *Id.* Count III Prayer for Relief.

Count IV alleges, by launching Volly.com internationally, which Foster claims has the same features as his Virtual P.O. Box concept, that Pitney Bowes violated 18 U.S.C.

¹⁵ *Id.* at ¶¶ 362-367. By asserting a violation of section 401(2), it appears Foster is arguing that the alleged “sabotage” and “dismantling of assets” constitutes the Postal Service’s adoption, amendment, or repeal of a rule or regulation that is inconsistent with title 39. See 39 U.S.C. § 401(2).

¹⁶ *Id.* at ¶¶ 368-371. Based on the allegations in Count III, the Commission construes Foster’s arguments as allegations of violations of 39 U.S.C. § 404a(a)(2) and not 39 U.S.C. § 404(a)(2). Section 404(a)(2) is not implicated.

¹⁷ *Id.* Foster identifies two reports, *The Postal Service Role in the Digital Age Part 1: Facts and Trends* published on February 24, 2011 (Exhibit I) and *Virtual Post Office Boxes* published on April 17, 2013 (Exhibit L), as reports containing alleged plagiarized information. *Id.*

¹⁸ *Id.* Based on the allegations of Count III, the Commission also construes Foster’s arguments as allegations of violations of 15 U.S.C. § 45, which prohibits unfair methods of competition and unfair and deceptive acts or practices. See 15 U.S.C. § 45(a)(1).

¹⁹ Complaint at ¶ 370. Based on the allegations of Count III, the Commission further construes Foster’s arguments as allegations that the Postal Service and OIG are subject to Federal suit pursuant to 39 U.S.C. §§ 409(d) and (e) and not 39 U.S.C. §§ 404(d) and (e). Sections 404(d) and (e) are not implicated. See 39 U.S.C. §§ 409(d) and (e).

§§ 1831 and 1832.²⁰ Foster seeks damages in excess of \$1 billion, among other things.

Id. Count IV Prayer for Relief.

Count V alleges Foster provided trade secrets to the Postal Service and that the Postal Service in turn terminated its relationship with Foster and subsequently moved forward with the Virtual P.O. Box concept by renaming the idea (Volly.com) and implemented and operated it with Pitney Bowes. Complaint at ¶¶ 375-377. Foster argues these actions by the Postal Service and Pitney Bowes are a misappropriation of trade secrets. *Id.* Foster seeks damages in excess of \$150 million, among other things.

Id. Count V Prayer for Relief.

In Count VI, Foster alleges that the Postal Service solicited his Virtual P.O. Box concept and then violated his intellectual property rights by providing information, without his permission, to a third party and “saturating the public record” with his idea. *Id.* at ¶¶ 378-384. Foster states that the Postal Service “intentionally misrepresented” itself by indicating that it would keep the Virtual P.O. Box concept confidential and that he relied upon that representation. *Id.* at ¶¶ 380-381. Foster contends that the Postal Service’s actions amount to “unfair or deceptive practices” and that it is subject to a Federal suit pursuant to 39 U.S.C. § [409(d)], similar to the allegations of a portion of Count III.²¹ Foster seeks damages in excess of \$150 million, among other things. Complaint, Count VI Prayer for Relief.

Count VII alleges that the Postal Service “intentionally misrepresented” itself to Foster by indicating that it would keep the Virtual P.O. Box concept confidential, and that Foster relied upon that representation. *Id.* at ¶¶ 385-390. Foster asserts that the Postal Service intended to exploit him by using his idea and transmitted his idea to

²⁰ *Id.* at ¶ 372-374. Sections 1831 and 1832 of title 18 concern violations of economic espionage and theft of trade secrets, respectively. 18 U.S.C. §§ 1831 and 1832.

²¹ *Id.* at ¶¶ 379 and 383; see also *id.* at ¶¶ 368-371; see also *supra* nn.15, 17-18. Based on the allegations of Count VI, the Commission construes Foster’s arguments as allegations of violations of 15 U.S.C. § 45, which prohibits unfair methods of competition and unfair and deceptive acts or practices and that the Postal Service is subject to Federal suit pursuant to 39 U.S.C. § 409(d) and not 39 U.S.C. § 404(d). Section 404(d) is not implicated. See 15 U.S.C. § 45(a)(1) and 39 U.S.C. § 409(d).

unknown third parties without his consent. *Id.* at ¶ 388. Foster once again contends that the Postal Service's actions amount to "unfair or deceptive practices" and that it is subject to a Federal suit pursuant to section [409].²² He seeks damages in excess of \$150 million, among other things. Complaint, Count VII Prayer for Relief.

Count VIII alleges the Postal Service and Pitney Bowes committed "a wrongful conversion" by implementing and operating Volly.com and the Business Customer Gateway without Foster's consent. *Id.* at ¶¶ 391-394. He seeks damages in excess of \$150 million, among other things. *Id.* Count VIII Prayer for Relief.

Count IX alleges that the wrongful appropriation of Foster's Virtual P.O. Box concept has caused the Postal Service and Pitney Bowes to be unjustly enriched. *Id.* at ¶¶ 395-397. Foster seeks damages consisting of direct and/or consequential damages, injunctive relief, and attorney fees and costs, among other things. *Id.* Count IX Prayer for Relief.

Count X alleges the Postal Service violated 39 U.S.C. § [404a(a)(3)] by launching the Business Customer Gateway that includes features like Customer Registration Identification and Mailer Identification which Foster contends are similar features to the Virtual P.O. Box concept.²³ He seeks damages in excess of \$1 billion, among other things. Complaint, Count X Prayer for Relief.

Count XI alleges "antitrust (unfair competition) violations, collusion, bid rigging, insider trading and market division" by the Postal Service and Pitney Bowes. *Id.* at ¶¶ 401-406. Specifically, Foster claims that the business relationship between the Postal Service and Pitney Bowes, and the alleged misconduct by both parties, reveals an "ongoing conspiracy to privatize Postal operations" and make the Postal Service

²² *Id.* at ¶ 389; see also *id.* at ¶ 378. Based on the allegations of Count VII, the Commission construes Foster's arguments as allegations of violations of 15 U.S.C. § 45, which prohibits unfair methods of competition and unfair and deceptive acts or practices and that the Postal Service is subject to Federal suit pursuant to 39 U.S.C. § 409 and not 39 U.S.C. § 404. Section 404 is not implicated. See 15 U.S.C. § 45(a)(1) and 39 U.S.C. § 409(d).

²³ *Id.* at ¶¶ 398-400. Based on the allegations in Count X, the Commission construes Foster's arguments as allegations of violations of 39 U.S.C. § 404a(a)(3) and not 39 U.S.C. § 404(a)(3). Section 404(a)(3) is not implicated. See 39 U.S.C. § 404a(a)(3).

“appear insolvent”.²⁴ Foster reiterates several claims described in other counts including disclosure of confidential intellectual property, misappropriation and theft of trade secrets, fraud, misrepresentation, and economic and industrial espionage. *Id.* He seeks damages in excess of \$3 billion, among other things. *Id.* Count XI Prayer for Relief.

*Racketeer Influenced and Corrupt Organizations (RICO) Act violations.*²⁵ On the same supporting facts, Foster alleges multiple violations under the RICO Act codified in 18 U.S.C. §§ 1961-1968 which prohibits patterns of racketeering activity.²⁶

The Complaint includes multiple claims against the Postal Service, Pitney Bowes, the OIG, and specific employees of these parties. *Id.* at ¶¶ 182-189.

Count I alleges the Postal Service and Pitney Bowes, through a pattern of racketeering, committed wire fraud by instructing Foster to upload intellectual property to its Innovations database in violation of 18 U.S.C. § 1343. *Id.* at ¶¶ 208-217.

Count II alleges Pitney Bowes, “through a pattern of racketeering,” committed bribery, mail fraud, and wire fraud in violation of 18 U.S.C. §§ 201, 1341, and 1343, respectively. *Id.* at ¶¶ 218-237. Foster states that Pitney Bowes contributed campaign donations to a U.S. Representative in order to influence the candidate, constituting bribery, and did so using the mail and wires. *Id.*

²⁴ *Id.* at ¶ 402. Based on the allegations of Count XI, the Commission construes Foster’s arguments as allegations of violations under 15 U.S.C. § 45, which prohibits unfair methods of competition and unfair and deceptive acts or practices. See 15 U.S.C. § 45(a)(1).

²⁵ Foster seeks relief for each RICO count. See *id.* at ¶¶ 181-357.

²⁶ *Id.* at ¶¶ 181-357. Racketeering activity is defined in 18 U.S.C. § 1961(1) and, as it pertains to the instant docket, includes any act indictable under sections 201 (bribery), 1341 (mail fraud), 1343 (wire fraud), or 1957 (engaging in monetary transaction in property derived from specified unlawful activity) under title 18, and the fraudulent sale of securities under title 11. See 18 U.S.C. § 1961(1). Foster alleges violations of title 11 and 17 of the Code of Federal Regulations, sections 1001(2), 1831, 1832, and 1326 of title 18, section 30122 of title 52, section 1 of title 15 as part of his RICO related causes of action. However, these sections do not fall under appropriate RICO violations as defined in 18 U.S.C. § 1961(1).

Count III alleges the Postal Service, “through a pattern of racketeering,” committed wire fraud in violation of 18 U.S.C. § 1343 when it sent emails to Foster with the intent to deceive and steal his intellectual property. *Id.* at ¶¶ 238-250.

Count IV alleges the Postal Service and the OIG, “through a pattern of racketeering,” committed mail fraud and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343, respectively. *Id.* at ¶¶ 251-265. Foster asserts the OIG, “using US Wires and US Mail, employed a deceptive device through the release of [a] report...,” assisted the Postal Service in carrying out its scheme to “defraud” him out of his intellectual property. *Id.* at ¶¶ 255-256.

Count V alleges that the Postal Service and Pitney Bowes, “through a pattern of racketeering,” committed mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343 and engaged in monetary transactions derived from unlawful activity in violation of 18 U.S.C. § 1957. *Id.* at ¶¶ 266-278. Foster contends that Pitney Bowes used and invested income derived from racketeering in order to launch Volly.com. *Id.*

Count VI alleges that Pitney Bowes, “through a pattern of racketeering,” committed economic espionage (18 U.S.C. § 1831), theft of trade secrets (18 U.S.C. § 1832) and did so using mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343, respectively. Complaint at ¶¶ 279-287. Foster argues that the Postal Service disclosed his intellectual property to Pitney Bowes and that Pitney Bowes used the information to launch Volly.com using wires and the mail. *Id.* As Volly.com was launched outside of the United States, Foster contends it amounts to economic espionage. *Id.*

Count VII alleges the Postal Service and the OIG, “through a pattern of racketeering,” committed mail fraud and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343, respectively. *Id.* at ¶¶ 288-297. Foster asserts that the Postal Service and the OIG, using wires and the mail, disseminated “plagiarized reports” and information to the public and other government officials. *Id.*

Count VIII alleges the Postal Service and the OIG, “through a pattern of racketeering,” committed mail fraud and wire fraud in violation of 18 U.S.C. §§ 1341 and

1343, respectively. Complaint at ¶¶ 298-316. Foster specifically argues that the Postal Service misappropriated his intellectual property and created its Business Customer Gateway, including Mail Identification and Customer Registration Identification, using wires and the mail. *Id.* at ¶ 302.

Count IX alleges the Postal Service and Pitney Bowes, “through a pattern of racketeering,” committed mail fraud and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343, respectively. Complaint at ¶¶ 317-341. Foster asserts the Postal Service and Pitney Bowes, using wires and the mail, “dismantled the assets of the Postal Service, in order to create the deception that the Postal Service was insolvent.” *Id.*

Count X alleges the Postal Service and Pitney Bowes, “through a pattern of racketeering,” committed mail fraud and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343, respectively. Complaint at ¶¶ 342-357. Foster argues that the Postal Service and Pitney Bowes, in their ongoing scheme to “force the demise [of] the Postal Service,” made false statements by intentionally omitting information from financial disclosures of the Postal Service as it related to the recession. *Id.* at ¶¶ 347-348.

Relief requested. In summary, Foster maintains that the allegations “spawn” from violations of section 404a and therefore the Commission may have supplemental jurisdiction over all claims.²⁷ Foster requests that the Commission hold hearings to determine if the Complaint raises material issues of fact or law and that it investigate the allegations in order to provide transparency and hold the Postal Service accountable for its operations as they pertain to the allegations.²⁸

In addition, he requests that the Commission adjudicate all claims; adjudicate those claims it has jurisdiction over and transfer any other claims to the proper venue or agency; or transfer all claims to the proper venue or agency. *Id.* Foster “believes the predominate claims should be transferred to the District Court and several allegations should be referred to the...OIG and the US Department of Justice....” *Id.*

²⁷ *Id.* at ¶ 203. Paragraph 203 should be numbered as ¶ 407.

²⁸ *Id.* at ¶ 204. Paragraph 204 should be numbered as ¶ 408.

IV. COMMENTS

A. Pitney Bowes

Pitney Bowes argues two grounds exist for dismissal of the Complaint as to Pitney Bowes: lack of personal jurisdiction, and *res judicata*. Pitney Bowes Motion at 1.

First, Pitney Bowes argues that under section 3662, the Commission only has jurisdiction over the Postal Service and that the Commission lacks personal jurisdiction over Pitney Bowes. Pitney Bowes Motion at 2. Pitney Bowes cites to 39 U.S.C. § 3662(a) which only permits interested persons to lodge a complaint with the Commission who believe “the Postal Service is not operating in conformance with the requirements of” specific statutory provisions. *Id.*; see also 39 U.S.C. 3662(a).

Pitney Bowes further states that should the Complaint be found justifiable, the Commission’s authority to impose relief is limited to the Postal Service. Pitney Bowes Motion at 2; see also 39 U.S.C. § 3662(c).

Second, Pitney Bowes contends that even if the Commission had personal jurisdiction over Pitney Bowes, the Complaint should nevertheless be dismissed because Foster’s claims against Pitney Bowes are barred by the doctrine of *res judicata*, which prohibits the relitigation of claims previously litigated. Pitney Bowes Motion at 3.

On November 23, 2011, Foster filed a Complaint against Pitney Bowes and the Postal Service in the Eastern District Court of Pennsylvania alleging multiple causes of action.²⁹ In his District Court complaint, Foster claimed Pitney Bowes violated section 404a of title 39, misappropriated trade secrets by knowingly using confidential trade secrets for its own benefit, intentionally misrepresented to Foster that it would keep confidential the ideas he generated, committed conversion by wrongfully appropriating his idea for its own benefit and that by wrongfully appropriating his idea, Pitney Bowes

²⁹ *Foster v. Pitney Bowes Corporation, et al.*, 2011 WL 6076119 (E.D. Pa. 2011).

was unjustly enriched.³⁰ Pitney Bowes submitted a motion for judgment on the pleadings and the District Court granted the motion stating that Foster “failed to allege facts that will plausibly show under any circumstances that he is entitled to relief.” *Id.* at 10.

Pitney Bowes states that *res judicata* bars relitigation of claims and issues that were previously litigated or could have been raised in a prior litigation. Pitney Bowes Motion at 3; *see also id.* at n.5. Pitney Bowes maintains that all of the counts leveled against it in the Complaint were, or could have been, raised in the previous litigation between Foster and Pitney Bowes. Pitney Bowes Motion at 3-5.

B. Postal Service

The Postal Service argues multiple grounds for dismissal of the Complaint. It argues the Complaint fails to state a claim under 39 U.S.C. § 404a, and that the Commission lacks jurisdiction over several counts. Postal Service Motion at 3, 9-17.

As to Foster’s allegations under 404a, the Postal Service argues that any claim made pursuant to 39 U.S.C. § 404a(a)(2) fails because Foster disclosed his Virtual P.O. Box concept voluntarily to the Postal Service, Pitney Bowes, and the public, thus there was no compulsion by the Postal Service as required by the rule. *Id.* at 9; *see also* 39 U.S.C. § 404a(a)(2). Furthermore, the Postal Service asserts that the allegedly disclosed information does not constitute intellectual property for purposes of 39 U.S.C. § 404a(a)(2). *Id.* The Postal Service notes that in *Foster v. Pitney Bowes, et al.*, the District Court found that Foster’s patent application for his Virtual P.O. Box concept was available to the public and that Foster “made no reasonable effort to secure confidentiality agreements before discussing...[his idea]...or otherwise treat...[his idea]...as confidential information.”³¹ Finally, the Postal Service indicates that the Innovations database program Foster used to submit his Virtual P.O. Box concept

³⁰ *Foster v. Pitney Bowes Corporation, et al.*, 2013 WL 487196, at 3-10 (E.D. Pa. 2013).

³¹ Postal Service Motion at 10-11; *Foster v. Pitney Bowes Corporation, et al.*, 2013 WL 487196, at 4, 6-8 (E.D. Pa. 2013).

includes terms and conditions that eliminate the proprietary nature of any information submitted. Postal Service Motion at 12.

The Postal Service also argues that any claim made pursuant to 39 U.S.C. § 404a(a)(3) fails because Foster has identified “no Postal Service product or service that reflects the features and functions” of the Virtual P.O. Box concept, and information concerning the concept was available publicly and through sources other than Foster. Postal Service Motion at 9, 12-15; see *also* 39 U.S.C. § 404a(a)(3).

The Postal Service maintains that the programs Foster identifies (Volly.com and Business Customer Gateway) as having the same features as the Virtual P.O. Box concept are substantially different and not based on any information provided by Foster. Postal Service Motion at 13. Specifically, as to the Postal Service’s Business Customer Gateway, the Postal Service notes that the two features (Customer Registration Identification and Mailer Identification) Foster argues are similar to the Virtual P.O. Box concept are utilized for customer registration and organization purposes and are unrelated to the online identity verification functions of the Virtual P.O. Box concept. *Id.*

In addition, the Postal Service argues that the public availability of information related to the Virtual P.O. Box concept further justifies dismissal of the Complaint pursuant to rule 3032.7(b). Postal Service Motion at 13-14. As the Postal Service notes, rule 3032.7 permits the Postal Service to claim an affirmative defense for violations under 39 U.S.C. § 404a(a)(3) if the Postal Service can demonstrate that the alleged unlawfully obtained information was or could have been obtained from an independent source. *Id.*; see *also* 39 C.F.R. § 3032.7(b). The Postal Service states that information concerning Foster’s Virtual P.O. Box concept was obtainable through multiple sources, including his patent application. Postal Service Motion at 14. Furthermore, the Postal Service argues that Foster waived any claims related to disclosure of the Virtual P.O. Box concept when he agreed to the terms and conditions of the Innovations database and submitted his idea, thus making the information available through yet another source. *Id.*; see *also id.* Attachment A.

The Postal Service maintains that the remainder of the claims must be dismissed for lack of jurisdiction because the Commission's complaint jurisdiction is limited by 39 U.S.C. § 3662. Postal Service Motion at 15. Section 3662 permits any interested person who believes the Postal Service is not operating in conformance with sections 101(d), 401(2), 403(c), 404a, and 601 to lodge a complaint with the Commission. See 39 U.S.C. § 3662(a). The Postal Services states that Counts III and VI allege violations of section 404, Count IV alleges economic espionage violations under title 18, Count V alleges misappropriation of trade secrets, Count VII alleges misrepresentation and fraud, Count VIII alleges conversion, Count IX alleges unjust enrichment, and Count XI alleges the Postal Service intentionally incurred losses in an effort to privatize the Postal Service. Postal Service Motion at 15-16. The Postal Service argues none of these counts reference an enumerated provision in section 3662 and therefore "do not provide a basis for jurisdiction before the Commission." *Id.* at 16.

Count II alleges a violation of 39 U.S.C. § 401(2), which the Postal Service admits falls within the Commission's complaint jurisdiction pursuant to section 3662, but that Foster fails to allege any rule or regulation adopted, amended, or repealed by the Postal Service that is inconsistent with title 39. *Id.* 16-17.

C. Foster's Response to Motions to Dismiss

Foster maintains that the Postal Service and Pitney Bowes are incorrect in asserting that the Commission lacks jurisdiction over the Complaint and that Foster failed to state a claim upon which relief may be granted. Plaintiff's Response at ¶ 3. Foster challenges the terms and conditions as they relate to the Innovations database and argues that while confidential information must be shared with the Postal Service in order to discuss proposals, it does not permit the Postal Service to "steal" the confidential information that was disclosed. *Id.* at ¶ 7. Foster argues that because the Privacy Act associated with the Innovations database indicates potential disclosure to appropriate third parties, it links any third party who received information to claims against the Postal Service, *i.e.* Pitney Bowes is linked to any Postal Service violation.

Id. at ¶¶ 12-14. To further support grounds for jurisdiction, Foster contends that Pitney Bowes' actions, as described in the Complaint, were "on behalf" of the Postal Service thereby making Pitney Bowes a government employee as defined by 28 U.S.C. § 2671.³² Therefore, as a "government employee," the Commission has complaint jurisdiction over Pitney Bowes. *Id.* at ¶ 15.

Foster takes issue with the Postal Service's characterization that he waived confidentiality by submitting his proposal to the Innovations database or by filing his patent application with the U.S. Patent and Trademark Office. *Id.* at ¶ 17. Foster argues the Postal Service and Pitney Bowes "avoided" adjudication in the District Court and their assertion that many of these claims were previously adjudicated by the District Court is incorrect. *Id.* at ¶¶ 19-26. Foster urges the Commission to exercise jurisdiction over the Postal Service and Pitney Bowes. *Id.* at ¶ 31.

V. COMMISSION ANALYSIS

A. Commission's Complaint Jurisdiction

The Commission has jurisdiction over complaints that meet the statutory requirements of 39 U.S.C. § 3662(a), which permits interested persons to file complaints if they believe "the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter [36] (or regulations promulgated under any of those provisions)...."³³

Section 101(d) relates to the apportionment of costs of postal operations to all users of the mail on a fair and equitable basis. Section 401(2) permits the Postal Service to adopt, amend, and repeal rules and regulations not inconsistent with title 39. Section 403(c) prohibits the Postal Service, except as specifically authorized under title 39, from undue or unreasonable discrimination against users of the mail in providing

³² *Id.* at ¶ 15. Section 2671 defines an "employee of the government" to include persons acting on behalf of a federal agency. See 28 U.S.C. § 2671.

³³ 39 U.S.C. § 3662(a); see also 39 C.F.R. § 3030.2.

services and establishing classifications, rates, and fees. Section 404a, except as specifically authorized by law, prohibits the Postal Service from establishing rules or regulations that create unfair competition; compel the disclosure of intellectual property; and offer services based on confidential information, without consent, unless substantially the same information is obtained or obtainable from an independent source. Section 601 applies to the carriage of letters out of the mails. Chapter 36 covers title 39 provisions relating to rates, classes, and services.

The Commission's complaint jurisdiction is therefore limited to complaints filed against the Postal Service and those that involve alleged violations of these five specific sections of title 39 or the sections contained in chapter 36.

B. Parties Outside of Commission Jurisdiction

Pitney Bowes and the OIG. As stated previously, the Commission's complaint jurisdiction as prescribed by 39 U.S.C. § 3662(a) is limited to complaints lodged against the Postal Service. See 39 U.S.C. § 3662(a). While the Complaint does appropriately include claims against the Postal Service, Foster attempts to extend the Commission's complaint authority to Pitney Bowes and the OIG. However, as Pitney Bowes accurately argues in its motion, section 3662(a) does not give the Commission authority over any party other than the Postal Service.³⁴ As such, the Commission grants the Pitney Bowes Motion for lack of jurisdiction and dismisses all allegations as they relate to Pitney Bowes (Counts I-II, IV-V, VIII-IX, and XI) and the OIG (Count III).

In its motion to dismiss, Pitney Bowes argues that the allegations against it are barred by *res judicata*. *Id.* Given the Commission has determined that the Complaint should be dismissed on jurisdictional grounds, it is unnecessary to address the additional issues raised by Pitney Bowes in support of dismissing the Complaint.

³⁴ Pitney Bowes Motion at 1; see also Docket No. C2015-2, Order No. 2585, Order Granting Motion to Dismiss, July 15, 2015; Docket No. C2015-1, Order No. 2377, Order Granting Motion to Dismiss, March 4, 2015.

Additionally, the Commission finds that Foster's response to motions to dismiss contains no additional information or legal basis altering the analysis provided in this Order or warranting a denial of the Pitney Bowes Motion.

C. Claims Unrelated to the Commission's Complaint Jurisdiction

Alleged tort claims. Counts V and VII-IX allege various tort claims against the Postal Service. In Count V, Foster claims that the Postal Service misappropriated trade secrets when it facilitated the creation of Volly.com by disclosing Foster's Virtual P.O. Box concept to Pitney Bowes. In Count VII, Foster alleges that the Postal Service misrepresented itself when it indicated it would keep his Virtual P.O. Box concept confidential. In Count VIII, Foster claims that the Postal Service committed conversion by implementing and operating Business Customer Gateway without Foster's consent. Finally, in Count IX, Foster alleges that the Postal Service was unjustly enriched by its wrongful appropriation of the Virtual P.O. Box concept. These claims fail to indicate the Commission's complaint jurisdiction. Therefore, Counts V and VII-IX must be dismissed for lack of jurisdiction.

Alleged antitrust violations. A portion of Count III, and Counts VI, and XI allege that the Postal Service's actions amount to unfair or deceptive practices in violation of 15 U.S.C. § 45 and that it is subject to a Federal suit pursuant to 39 U.S.C. § 409(d). Section 45 specifically empowers the Federal Trade Commission (FTC) with the authority over proceedings alleging unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices affecting commerce. See 15 U.S.C. § 45. These claims fail to indicate the Commission's complaint jurisdiction. Jurisdiction, to the extent there is a possibility of facts that allege a violation, lies with the FTC. Therefore, applicable portions of Count III and Counts VI and XI are dismissed for lack of jurisdiction.

Alleged RICO violations. Ten counts of RICO violations are alleged under 18 U.S.C. §§ 1961-1968. Section 3231 of title 18, specifically empowers the District Courts of the United States with the authority over all offenses in title 18. See 18 U.S.C.

§ 3231. None of these claims indicate the Commission's complaint jurisdiction. Jurisdiction, to the extent there is a possibility of facts that allege a violation, lies with the District Courts. Therefore, all alleged RICO violations are dismissed for lack of jurisdiction.

D. Claims Subject to the Commission's Complaint Jurisdiction

Three provisions of title 39 included in section 3662(a) (sections 101(d), 403(c), and 601) bear no relationship to the issues or facts asserted in the Complaint. However, the alleged violations of sections 401(2) and 404a of title 39 fall under the Commission's jurisdiction pursuant to section 3662(a) and are considered below.

Alleged violation of section 401(2). As part of Count II, Foster claims that the Postal Service refused to terminate a contract with CB Richard Ellis, Inc. after the OIG found issues with postal properties that CB Richard Ellis, Inc. was leasing and selling. Complaint at ¶¶ 363-366. Foster argues that, in continuing to do business with CB Richard Ellis, Inc., the Postal Service sabotaged and dismantled postal assets thereby adopting, amending, or repealing a rule or regulation inconsistent with title 39 in violation of section 401(2).

The Postal Service argues that while a violation of section 401(2) falls under the Commission's complaint jurisdiction, Foster failed to identify a specific rule or regulation that the Postal Service adopted, amended, or repealed that was inconsistent with title 39. Postal Service Motion at 16-17. The Commission finds the Postal Service's alleged action is not a rule or regulation that was adopted, amended, or repealed by the Postal Service as described in section 401(2). As no rule or regulation is cited as being inconsistent with title 39, Count II is dismissed for failure to state a claim.

Alleged violations of section 404a.

Portions of Count I and Count III allege the Postal Service violated section 404a(a)(2), which prohibits the Postal Service from compelling the disclosure of intellectual property to a third party. 39 U.S.C. § 404a(a)(2). Foster argues the Postal Service compelled him to disclose his Virtual P.O. Box concept and in turn, the Postal Service disclosed

the information to Pitney Bowes. Complaint at ¶ 359. As proof of this disclosure, Foster cites to correspondence he allegedly received from Postal Service employees who indicated they were sharing his Virtual P.O. Box concept with “internal” or “potential” stakeholders. See *id.* at ¶ 14, Exhibits D and E. Foster concludes the referenced “potential” stakeholder was Pitney Bowes based on its long-standing business relationship with the Postal Service and Pitney Bowes’ launch of Volly.com, a secure digital mail delivery service, which Foster argues had similar features to the Virtual P.O. Box concept. *Id.* at ¶¶ 50-59.

A violation of section 404a(a)(2) requires the Complainant to show that the Postal Service compelled the disclosure of intellectual property. See 39 U.S.C. § 404a(a)(2). Commission rules require that for violations of section 404a(a)(2) the Complaint must show the Postal Service compelled or attempted to compel disclosure of intellectual property. See 39 C.F.R. § 3032.6(a). The Postal Service maintains that it did not compel or attempt to compel Foster to submit his idea to the Innovations database and that he did so voluntarily. Postal Service Motion at 9. Foster provides no factual evidence that supports his assertion that the Postal Service “compelled” him to submit his idea.

In addition, even if the Commission found that the Postal Service solicited Foster’s input, he failed to show that the Virtual P.O. Box concept qualified as intellectual property or that it was proprietary in nature.³⁵ Foster’s patent application was denied by the U.S. Patent and Trademark Office due to obviousness and therefore does not qualify as intellectual property. See Postal Service Motion at Attachment E. Furthermore, in *Foster v. Pitney Bowes, et al.*, the District Court found that not only was Foster’s patent application available to the public, but that Foster made no reasonable attempts to treat his idea as confidential. Postal Service Motion at 10-11. The terms and conditions of use of the Innovations database specifically indicate that any information submitted is on a “nonconfidential” basis. *Id.* Attachment B. Therefore,

³⁵ Commission rule 3032.6(b) defines intellectual property not only as patents, copyrights, or trademarks, but also as trade secrets and proprietary information. See 39 C.F.R. § 3032.6(b).

without a showing that the Postal Service compelled Foster to disclose the information or that the information at issue was proprietary, the Commission dismisses all counts alleging violations of 39 U.S.C. § 404a(a)(2).

A portion of Count I and Count X allege the Postal Service violated section 404a(a)(3), which prohibits the Postal Service from obtaining information from a person concerning a product, and then offering a postal service that uses or is based in whole or in part on the information received, without consent, unless substantially the same information is obtained or obtainable from independent sources. See 39 U.S.C. § 404a(a)(3). Commission rule 3032.7 requires alleged violations of 404a(a)(3) must show: (1) the person filing the complaint has provided or sought to provide a product, (2) the Postal Service obtained information about the product from the person filing the complaint, and (3) the Postal Service offers or offered a service that uses or is based on the information obtained by the person filing the complaint. See 39 C.F.R. § 3032.7(a).

Foster asserts that, after he disclosed his Virtual P.O. Box concept to the Postal Service, via the Innovations database, the Postal Service used the concept to create the Business Customer Gateway.³⁶ Foster indicates two features, Customer Registration Identification and Mailer Identification, as identical to his Virtual P.O. Box concept. *Id.* at ¶ 399. The Postal Service states that those features are used for customer regulations and organization purposes and are unrelated to the online identity verification functions of the Virtual P.O. Box concept. Postal Service Motion at 13.

Foster's Complaint shows that he provided a product suggestion, the Virtual P.O. Box concept, and that the Postal Service obtained information concerning the concept from him; however, the Complaint fails to show the Postal Service's Business Customer Gateway service uses or is based on the Virtual P.O. Box concept. Foster only identifies two features that he argues are the same as features found in his Virtual P.O.

³⁶ Complaint at ¶ 47. Foster also claims that the Postal Service disclosed information to Pitney Bowes and that Pitney Bowes used the information to create Volly.com. See, e.g., *id.* at ¶ 34. However, that alleged violation of section 404a(a)(3) does not fall within the Commission's jurisdiction because Volly.com is a service offered by Pitney Bowes and not by the Postal Service.

Box concept, which as the Postal Service explains, serve a different purpose than the features of Virtual P.O. Box.

The Postal Service asserts that even if Foster had provided sufficient facts showing that Business Customer Gateway was based on the Virtual P.O. Box concept, the allegations should be dismissed because the information was available from an independent source (the rejected patent application). See 39 C.F.R. § 3032.7(b). However, the Postal Service's proffer of an affirmative defense pursuant to rule 3032.7(b) is unnecessary. Without sufficient facts to support Foster's claim that Business Customer Gateway is at least partially based on the Virtual P.O. Box concept, the Commission dismisses all counts alleging violations of 39 U.S.C. § 404a(a)(3).

Furthermore, the Commission finds that Foster's response to motions to dismiss contains no additional information or legal basis altering the analysis provided in this Order or warranting a denial of the Postal Service's Motion.

Accordingly, the Postal Service's motion to dismiss is granted and the Complaint is dismissed with prejudice.

VI. ORDERING PARAGRAPHS

It is ordered:

1. Pitney Bowes, Inc.'s Motion to Dismiss the Complaint of Frederick Foster, filed July 8, 2015, is granted.
2. The United States Postal Service Motion to Dismiss the Complaint of Frederick Foster, filed July 14, 2015, is granted.
3. The Complaint of Frederick Foster, filed June 24, 2015, is dismissed.

By the Commission.

Shoshana M. Grove
Secretary